

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TREVOR SLOAN, JOSEPH BLEIBERG,
ARYEH LOUIS ROTHBERGER,
PATRICK COMMERFORD, KEVIN
FARR, ELMER ORPILLA, KEITH
LAPATING, and SAGAR DESAI, on behalf
of themselves and
all others similarly situated,

Plaintiffs,

v.

ANKER INNOVATIONS LIMITED,
FANTASIA TRADING LLC, and POWER
MOBILE LIFE LLC

Defendants.

Case No. 1:22-cv-07174

Honorable Sara L. Ellis

**DEFENDANTS' MOTION TO DISMISS
CONSOLIDATED CLASS ACTION COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants Anker Innovations Limited, Fantasia Trading LLC, and Power Mobile Life LLC (“Defendants”) respectfully move the Court for an order dismissing with prejudice Plaintiffs Trevor Sloan, Joseph Bleiberg, Aryeh Louis Rothberger, Patrick Commerford, Kevin Farr, Elmer Orpilla, Keith Lapating, and Sagar Desai’s (“Plaintiffs”) Consolidated Class Action Complaint, ECF No. 31 (“Complaint”) asserting claims for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.* (“ICFA”), violation of New York General Business Law §§ 349, 350, N.Y. Gen. Bus. Law § 349 *et seq.* (“GBL”), violation of Massachusetts General Laws Chapter 93A, Mass. Gen. Laws ch. 93A, § 1 *et seq.* (“MGL”), violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201 *et seq.* (“FDUTPA”), violation of the Federal Wiretap

Act, 18 U.S.C. § 2510 *et seq.* (“Wiretap Act”), violation of the Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.* (“BIPA”), and unjust enrichment (the “Motion”). The grounds for this Motion, as discussed more fully in the accompanying Memorandum of Law incorporated by reference herein, are as follows:

1. Plaintiffs’ Wiretap Act claim fails because Defendants were a party to the allegedly intercepted communications and Defendants did not intercept any communications in transit.

2. Plaintiffs’ BIPA claim fails because Plaintiffs have not alleged any facts plausibly showing that Defendants “possessed,” “collected,” or “captured” “biometric identifiers” or “biometric information.” Moreover, Plaintiffs cannot assert the claim on behalf of the non-Illinois Plaintiffs or a nationwide class because they do not allege any facts that permit the extraterritorial application of BIPA.

3. Plaintiffs’ consumer protection claims fail because Plaintiffs do not allege a deceptive or unfair practice or that such a practice caused them harm. Further, Plaintiffs’ ICFA claim is limited to Illinois residents.

4. Plaintiffs’ unjust enrichment claim fails because it is predicated on the same allegations as its consumer protection claims.

5. The Complaint should be dismissed for impermissible group pleading alone.

WHEREFORE, Defendants respectfully request that this Court dismiss the Complaint with prejudice.

CERTIFICATION OF ATTORNEY CONFERENCE

Pursuant to the Court’s Case Procedures regarding Motion Practice, counsel for Defendants, Scott Sakiyama, engaged in a telephonic meet and confer with counsel for Plaintiffs, Trenton Kashima, on June 1, 2023, which included a candid discussion regarding the bases for this

Motion. At the conclusion of the discussion, the parties agreed that the issues to be raised in the Motion could not be resolved without filing the Motion due to the nature of the arguments which form the bases of the Motion.

Dated June 6, 2023

Respectfully submitted,

Anker Innovations Limited, Fantasia Trading LLC, and
Power Mobile Life LLC

/s/ Scott T. Sakiyama

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*Attorneys for Defendants Anker Innovations Limited,
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CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to all counsel of record.

/s/ Scott T. Sakiyama
Scott T. Sakiyama